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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
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TREASURE ISLAND FORMER AND) Case No.
CURRENT RESIDENTS, ANDRE)
PATTERSON, FELITA SAMPLE, Including All)
Parties Listed in Paragraph 1 of Complaint and)
Doe Plaintiffs 1-2000, on behalf of themselves,)
and all other similarly situated,)

NOTICE OF REMOVAL OF CIVIL ACTION

Plaintiffs,

vs.

TREASURE ISLAND DEVELOPMENT)
AUTHORITY; TREASURE ISLAND)
HOMELESS DEVELOPMENT INITIATIVE;)
SHAW ENVIRONMENTAL; U.S. NAVY)
TREASURE ISLAND CLEAN UP DIRECTOR)
JIM SULLIVAN, in his individual capacity; U.S.)
NAVY TREASURE ISLAND CLEAN UP)
PROJECT MANAGER DAVID CLARK, in his)
individual capacity; U.S. NAVY)
REPRESENTATIVE KEITH FORMAN, in his)
individual capacity; TETRA TECH EC, INC.;)
DAN L. BATRACK, in his individual capacity;)
STATE DEPARTMENT OF TOXIC)
SUBSTANCE CONTROL; SAN FRANCISCO)
DEPARTMENT OF PUBLIC HEALTH;)
LENNAR INC; FIVE POINT HOLDINGS,)
LLC.; JOHN STEWART COMPANY and)
DOES 1-100 inclusive,)

Defendants.

TO: United States District Court for the Northern District of California

Clerk of the Court
Superior Court of California
County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Stanley Goff
Law Office of Stanley Goff
15 Boardman Place, Suite 2
San Francisco, CA 94103

PLEASE TAKE NOTICE that on this day **Case No. CGC-20-582410** pending before the San Francisco County Superior Court is being removed to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1442(a)(1), on behalf of the following federal defendants in their official capacities: Jim Sullivan, U.S. Navy Treasure Island Clean Up Director; David Clark, U.S. Navy Treasure Island Clean Up Lead Project Manager; Keith Forman, U.S. Navy Representative;

(collectively, the “Federal Defendants”). Upon the direction of the Attorney General of the United States and pursuant to 28 U.S.C. § 1446, the undersigned attorneys hereby present the following facts to the Judges of the United States District Court for the Northern District of California.

1. In the complaint, Plaintiffs, who are current and former residents of Treasure Island, allege that the defendants failed to properly disclose the level of radiation in the soil of Treasure Island. A copy of Plaintiffs’ complaint is attached as **Exhibit A**.

2. Plaintiffs have not yet served the complaint on any of the Federal Defendants.

3. This action is removed to federal district court under 28 U.S.C. 1442(a)(1). Pursuant to written delegation from David L. Anderson, the duly appointed United States Attorney for the Northern District of California, the Chief of the Civil Division has been authorized to exercise on behalf of the United States Attorney the authority vested in him by the Attorney General, pursuant to 28 C.F.R. § 15.4, to certify that a defendant federal employee in a state court action was acting in the scope of his office or employment at the time of the relevant incident. 28 U.S.C. § 2679(d)(2). The Chief of the Civil Division has certified that the Federal Defendants were all acting within the course and scope of their employment with reference to the matters alleged in the complaint. See Certification Pursuant to 28 U.S.C. § 2679(d), attached as **Exhibit B**.

4. Upon removal, the United States is automatically substituted as the party defendant for the Federal Defendants in their official capacities, pursuant to 28 U.S.C. § 2679(d)(2). The claims against the Federal Defendants in their official capacities will proceed against the United States under the Federal Tort Claims Act (“FTCA”) in the same manner as any action against the United States filed pursuant to 28 U.S.C. § 1346(b), subject to the limitations and exceptions applicable to those actions. 28 U.S.C. § 2679(d)(4).

5. This action must be removed to the federal district court pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, and 28 U.S.C. § 1442(a)(1) because this action is against officers of a federal agency.

6. A federal defendant removing under Section 1442 must demonstrate three things: that it is a “person” within the meaning of the statute, that there is a “causal nexus” between its actions and

1 plaintiff's claim, and that it can assert a "colorable federal defense." *Durham v. Lockheed*, 445 F.3d
 2 1247, 1251 (9th Cir. 2006). Here, the Federal Defendants have met the three-part test for removal set
 3 forth in *Durham*. Moreover, with respect to the third requirement, "colorable" is interpreted broadly
 4 because "one of the most important reasons for removal is to have the validity of the defense of official
 5 immunity tried in a federal court." *Jefferson County, Ala. v. Acker*, 527 U.S. 423, 431 (1999).

6 7. A copy of this Notice is being filed with the Clerk of the San Francisco Superior Court,
 7 Civil Division. This filing will automatically effect the removal action described above in its entirety to
 8 this Court for all future proceedings pursuant to 28 U.S.C. § 1446(d).

9 Dated: February 21, 2020

Respectfully submitted,

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